

**OPINION  
48-165**

January 16, 1948            (OPINION)

**INSTITUTIONAL CARE**

**RE:   Indian Patients - No Discrimination**

Reference is made to your letter of December 26, 1947, relative to maintenance expense of Indians at the Grafton State School, and the real question presented is whether or not the state is justified in charging the federal government more for the care and maintenance of Indians at the school than it charges for other residents of the state.

In the past the board of administration has had an agreement with the federal government permitting the Grafton State School to receive Indian patients and the federal government has paid the actual cost of their maintenance and treatment. The charges made against the federal government have been considerably larger than the charges made against the counties since the counties have paid only a part of the actual cost and the deficiency has been made up by the legislative appropriation.

The federal government is now challenging the state's right to charge it more than is charged for the white patients sent to the school by the several counties of the state.

Section 25-0402 of the North Dakota Revised Code of 1943 provides that the state school (Grafton) shall be maintained for the relief and instruction of the feeble-minded and for the care and custody of the epileptic and idiotic of this state.

Section 25-0404 of the North Dakota Revised Code of 1943 provides that:

Subject to the payment of the sums provided for in this chapter and to such rules and regulations as may be made by the board, the benefits of the state school may be received by persons who are residents of this state and who are:

1.    Feeble-minded and, in the opinion of the superintendent of the state school, are of suitable age and capacity to receive instruction in such school and whose defects prevent them from receiving proper training and instruction in the public schools;
2.    Idiotic; or
3.    Epileptic.

Section 25-0409 of the North Dakota Revised Code of 1943, as amended by chapter 207 of the 1947 Session Laws, provides as follows:

The expense of the care, board, and treatment of each inmate in the state school shall be a charge upon the county from which

the inmate is sent. A county shall pay to the state treasurer the sum of twenty dollars per month for the care and treatment of each inmate sent from the county to the state school."

The answer to your question depends upon whether or not the Indians residing within the state of North Dakota are entitled to the same treatment and consideration as other residents of the state.

It should be observed that by Act of Congress approved June 2, 1924 (42 Stat. L. 25.8 U.S.C. Sec. 3), Indians who were not already citizens were granted citizenship. Also, the Fourteenth Amendment to the Federal Constitution provides that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.

Without going into detail discussing the cases and decisions, I believe it is clear, under the provisions of the Act of Congress and the Federal Constitution referred to, that the Indians in this state are citizens of the state and entitled to the same consideration as other citizens and residents of the state.

In view of the foregoing, it would be inequitable for the state to charge a greater sum for care and maintenance of Indians at the state school than it charges for other residents of the state. The federal government, in order to reimburse local political subdivisions of the state, is willing to pay at the same rate fixed by law for the counties.

It is our opinion, therefore, that there should be no discrimination against the Indian patients in the charges made for care and instruction at the Grafton State School, but that such charges should be uniform regardless of whether the patients are white or Indians.

NELS G. JOHNSON

Attorney General